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Automatic Sprinkler Appeals Board

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VICE CHAIRMAN

Docket # 2011-19
308 East Main Street
East Brookfield, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½ and Chapter 6, section 201, relative to a determination of the East Brookfield Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by John and Marion Merola, hereinafter referred to as the Appellants. Lisa A. Merola, the facility manager, was authorized to act as the Appellant's representative in this matter. The building, which is the subject of the order, is located at 308 East Main Street, East Brookfield, MA, and houses an establishment operated under the name of "The Lashaway Inn."

B) Procedural History

By written notice received by the Appellant on October 13, 2011, the Town of East Brookfield Fire Department issued an Order of Notice to the Appellants requiring the installation of an adequate system of automatic sprinklers in the subject building in accordance with the provisions of M.G.L c. 148, s. 26G½. The Appellant filed an appeal of said Order on November 16, 2011. The Board held a hearing relative to this appeal on January 11, 2012, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: Joseph P. Lussier, Esq. and Lisa A. Merola, manager of the facility. Appearing on behalf of the East Brookfield Fire Department was Chief Peter A. Livermore, Deputy Chief Paul Normandin, and John Couture, Building Inspector for East Brookfield.

Present for the Board were: Maurice M. Pilette, Chairman; Bart J. Shea, designee of the Commissioner of the City of Boston; Alexander MacLeod; Chief Thomas Coulombe; Peter

Gibbons; Aime R. DeNault; and George A. Duhamel. Steven P. Rourke, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the determination of the East Brookfield Fire Department requiring the installation of an automatic system of sprinklers in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½?

D) Evidence Received

1. Application for Appeal by Appellant
2. Letter/statement in Support of Appeal
3. Order of Notice of the East Brookfield Fire Department
4. Property Deed for Lakeview Inn, Inc. (dated July 6, 1971)
5. Building Outline Measurements/Construction
6. Certificate of Inspection – East Brookfield (issued 12/1/2010)
7. Copy of Letter from East Brookfield Fire Dept. exempting facility from 26G ½ requirements (dated April 1, 2006)
8. Notice of Hearing to Parties
9. Copies of two Memoranda that accompany hearing notices
10. Letter from East Brookfield Fire Department agreeing to continuance of hearing to January 2012
11. 2nd Notice of Hearing to Appellant and Attorney
12. 2nd Notice of Hearing to the East Brookfield Fire Department
13. Appellant's Submissions (binder package)
14. East Brookfield Fire Department Submissions (binder package)

E) Subsidiary Findings of Fact

- 1) According to evidence presented at the hearing, in 2006, the East Brookfield Fire Department originally made a determination that the facility was subject to the sprinkler provisions of MGL c.148, s. 26G½. The Appellant filed an appeal with this Board (case number 06-73). However, before the need for a hearing and determination by the Board, the parties withdrew the appeal based upon an agreement that the facility is “primarily used as a restaurant, hosting organized private dining events” and was therefore not subject to the provisions of s. 26G½. However, the Chief conditioned this determination upon the continued use of the facility in a manner consistent with said agreement.
- 2) By notice received by the Appellant on October 13, 2011, the East Brookfield Fire Department issued a new Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in the subject building in accordance with the provisions of M.G.L. c. 148, s. 26G½. In said subsequent Order, the Fire Department determined that the facility was being used in a manner inconsistent with the original terms

of the 2006 agreement. The Order indicated that among other things the facility was now hosting live entertainment on a continuous manner and that sprinklers will now be required in accordance with s. 26G½.

- 3) The subject building is a two-story structure made of cinderblock and wood framed construction. According to the Appellant, the building is 100' s.f. x 56' s.f. The downstairs/basement level (entrance located at the rear of the building) consists of 6 motel rooms. The basement area also features a boiler room, freezer/storage area. The first floor of the building features a main function room, restaurant area, bar area, a hallway, including an area described as "display/video" and a kitchen area. The building also features a 512 s.f. outside deck area accessible by doors from the bar area.
- 4) According to the current Certificate of Inspection issued on December 1, 2010, by the East Brookfield Building Department, the facility's total capacity is 185 persons throughout the first floor open to the public. The certificate further breaks-down said legal capacity as follows: 35 persons in the first floor bar, 90 persons in the first floor dining room, and 60 persons in the first floor rear dining room. Said Certificate of Inspection classifies the facility as an "A-2" establishment.
- 5) A floor plan depicts a small bar/lounge area at the left rear of the establishment consisting of approximately 210 s.f. The representative of the Appellant testified that there are 15 stools and 8 tables in that area. This bar/lounge area is open and accessible to three other areas described by the Appellant as "display/video," "restaurant seating area," and "banquet seating room," which are all connected by doors and hallways.
- 6) The Appellant's representative contends that the establishment is principally used as a restaurant and as a function facility that hosts private dining events and is therefore exempt from the sprinkler provisions of M.G.L. c.148, s. 26G½.
- 7) The representatives of the Appellant testified that the facility features live entertainment usually consisting of 1-2 person acoustic musicians or a 4-person band for dancing. The facility also features karaoke and "open mic" nights. An entertainment license was issued by the town in 2010 for a jukebox and cabaret. The manager testified that in 2008, Fire Chief Livermore verbally indicated to her that the acoustics, karaoke, and open mic nights would be permissible.
- 8) The establishment holds a full liquor license, which allows "*all kinds of alcoholic beverages to be drunk on the premises*" and indicates alcohol sales are allowed "from opening until closing at 1:00 a.m. All glasses will be off the bar at 1:15 a.m. The business premises will be closed no later than 1:30 a.m." However, the Appellant's representative indicated that currently the establishment is never open until 1:00 a.m. and sometimes closes as early as 10:00 p.m., depending upon business. They also indicated that the restaurant area typically closes between 9:00 p.m. (during winter) and 10:00-10:30 p.m. during the summer. The representative for the Appellant testified that although the bar usually remains open beyond

the time of restaurant operation, most menu items are still available at the bar for some time after the kitchen closes.

- 9) The Appellant's representative indicated that the facility holds private functions such as weddings, baby and bridal showers, birthday and anniversary parties, senior citizens meetings, class reunions and Lions Club events. These events are hosted in the "banquet seating" area located adjacent to the restaurant area. They are held pursuant to a contract and have an established number of attendees. The function events, feature the service of meals by either buffet, sit down service, or family style. The Appellants representative also indicated that food is sometimes provided by trays or platters. Attendees at such events may obtain alcoholic beverages from the wait staff in the function hall or are allowed to walk to the bar area and order drinks. The Appellant's representative also provided multiple certificates indicating that employees have successfully completed the crowd manager training program offered by the State Fire Marshal.
- 10) Chief Livermore indicated that the fire department issued the Order to install sprinklers in October 2011, based upon the overall building capacity, the existence of full bar and lounge service, the recent issuance of an entertainment license, the free flow of patrons throughout the facility and the many types of activities, which take place within the establishment.
- 11) The Chief indicated that, although the establishment may often be operated as a restaurant and function facility where the meal is the primary attraction, the characteristics of many of the activities which now occur in the establishment, indicate that the entire ground floor business, which has an occupancy of over 100 persons, is routinely and regularly operated as a facility that has characteristics of a bar and nightclub.
- 12) The Chief further indicated that based upon the current "A-2" use group classification, live entertainment, karaoke and cabaret licenses and the current terms of the liquor license, the entire facility is legally permitted to operate both as a bar and nightclub.
- 13) In support of the fire department's determination, Chief Livermore testified that he recently visited the establishment on at least three occasions. On such occasions, he witnessed live bands, dancing, low lighting levels and the service of alcoholic beverages late into the night. He also indicated that the event was open to the public and that patrons were allowed to move throughout all portions of building. The Chief indicated that such entertainment occurs between 3-4 times a week, which is in his opinion, "regular and routine." He indicated that during function events, alcoholic beverages are provided to event patrons directly from the bar or by wait staff. The Appellant's representative also confirmed that patrons attending an event in the function hall can walk to the bar and order drinks.
- 14) The Chief submitted copies of newspaper pages that list the dates, times and locations of scheduled appearances of live musical entertainers in the local area. "The Lashaway Inn" was frequently listed as the host facility for many of the live bands or performers. According to the events listed in the newspapers and testimony received at the hearing, the entertainment includes rock, blues and oldies performances. The representative of the

Appellants indicated that such performances do occur on a routine and regular basis and are, in general, open to the public.

- 15) The Chief testified that the marquis erected in front of the establishment frequently advertises items such as chicken wings, discounted beer, Karaoke and open mic nights. He indicated that such offerings are designed to attract patrons who seek and expect a 'bar' or "nightclub" like atmosphere.
- 16) The Chief expressed concerns about the facility in the event of an emergency. He noted that the facility has a monitored fire alarm. However, there have been instances when facility staff have silenced alarms without evacuating the facility or allowing the alarm to complete its proper "cycle."
- 17) The representative for the Appellant indicated that she has been told that the cost to install sprinklers could be approximately \$200,000.00. She indicated that this cost would create an unreasonable hardship on the business and could force it to close. Upon inquiry by the Board, the Appellant could not explain the basis for the high installation estimate and did not submit documentation to support the stated cost estimate.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G½, in pertinent part states: "every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a nightclub, dance hall, discotheque, bar, or similar entertainment purpose...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code". The law was effective as of November 15, 2004.
- 2) The most recent Inspection Certificate issued for this establishment on December 1, 2010 indicates that the occupancy is classified as an "A-2" assembly occupancy with a legal capacity of 185 persons. The subject building is considered a public assembly with a capacity of 100 persons or more. The legal classification of this establishment as an "A-2" assembly occupancy by the East Brookfield Building Department is significant. Under the provisions of the State Building Code, 780 CMR, such a classification includes establishments that are "designed for occupancy as dance halls, and for similar purposes".
- 3) It is the interpretation of this Board that the "A-2 like" occupancy, which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code, is the type of buildings subject to the provisions of M.G.L. c.148, s. 26G½.
- 4) This establishment's current classification as an A-2 use group, its ability to legally serve liquor until 1:00 a.m., combined with a valid license to feature a wide variety of live entertainment or cabaret activities, clearly indicate that this establishment is legally permitted and designed to accommodate "nightclub" type activities in addition to providing restaurant and function services.

- 5) In addition to the current legal ability to operate as a nightclub, this establishment also features many characteristics of a bar. The provisions of M.G.L. c.148, s. 26G½, also apply to “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a...**bar**...”.
- 6) In a guidance memorandum issued by this Board on January 10, 2005, the Board acknowledged the existence of establishments that may feature characteristics of both a restaurant and a bar or nightclub. In determining whether or not such “combination” establishments are subject to the provisions of M.G.L. Chapter 148, s. 26G½, this Board looks at such common sense factors such as:
 - a) Does the restaurant establishment regularly and routinely serve meals on a daily basis?
 - b) Does the establishment provide a bar, bar seating, bar standing and a bartender for the purposes of serving alcoholic beverages directly to alcohol consuming customers?
 - c) Does the bar and bar seating area have the ability to expand into the dining area to accommodate special entertainment activities or increased capacity/density?
 - d) If the establishment provides a bar and bar seating, are alcoholic beverages continuously served to customers more than one hour after full kitchen facilities have been closed?
 - e) Is live or recorded music provided for dancing purposes or for a viewing audience (does not include background dinner music)?
 - f) Does the establishment provide special entertainment, including but not limited to: musical, theatrical, comedy, or sport viewing activities?
 - g) Based upon the establishment’s name, décor, atmosphere, does a customer expect a bar or nightclub type establishment?
 - h) Is the establishment or portions thereof routinely or regularly used for private or public functions for dancing, parties, celebrations, entertainment or performance purposes?
 - i) Does the establishment have an entertainment license?
- 7) Upon a review of the evidence, as applied to the above listed factors (a) through (i), the Board makes the following findings:

- a) The establishment does have the characteristics of a restaurant since it serves full meals on a daily basis. However, the establishment is also regularly and routinely operated as a bar and as a nightclub.
- b) The establishment provides a bar, bar seating, bar standing and a bartender for the purposes of serving alcoholic beverages directly to alcohol consuming customers.
- c) The bar, bar seating and bar activities, on a routine and regular basis, expand into the other areas of the facility to accommodate special entertainment activities or increased capacity/density. During the live entertainment events and on some of the open mic and karaoke nights, the patrons are allowed to order drinks at the bar and move freely throughout the bar, function and dining areas.
- d) The establishment, on a routine and regular basis, provides the bar service of alcoholic beverages more than one hour after full kitchen facilities have been closed. In accordance with the liquor license, the facility is legally allowed to serve “*all kinds of alcoholic beverages to be drunk on the premises.*” The license also indicates that the allowable hours of alcohol sales on the premises are “from opening until closing at 1:00 a.m. All glasses will be off the bar at 1:15 a.m. The business premises will be closed no later than 1:30 a.m.” The Appellant indicated that on most nights the kitchen usually closes between 9:00 p.m. and 10:30 p.m. Although, the representatives of the Appellant indicated that the facility is never opened beyond 1:00 a.m., there was ample evidence to support a finding that the facility remains open well beyond the hours of restaurant/kitchen services, particularly on those frequent occasions that live entertainment or karaoke is featured.
- e) On a regular and routine basis, live or recorded music is provided for dancing purposes or for viewing audience as evidenced by testimony and copies of newspapers that list the dates, times and locations of scheduled appearances of live musical entertainers in the local area. The Lashaway Inn was frequently listed as the host facility for many of the live bands or performers. According to the events listed in the newspapers and testimony at the hearing, the entertainment includes rock, blues and oldies performances. The Appellant indicated that such performances occur on a routine and regular basis and are, in general, open to the public.
- f) The establishment also provides special entertainment in the form of Karaoke and open mic nights to attract patrons who expect a ‘bar’ or ‘nightclub’ like atmosphere, rather than mere restaurant accommodations.
- g) Offering special “pub like” items such as wings and discounted beer as indicated on the marquis erected in front of the establishment, is a further indication of the desire to attract customers into a “bar” type establishment.
- h) The establishment or portions thereof, are routinely or regularly used for private or public functions for dancing, parties, celebrations and for entertainment or performance purposes as outlined in 7(e) above. The varied characteristics of such

functions, as described, are not the type of tightly controlled, private dining functions that in some instances, support determinations that sprinklers are not required.

- i) The establishment currently holds an entertainment license that allows live entertainment.
- 8) Appellant's position that this establishment is "principally a restaurant and banquet facility" and therefore exempt from the provisions of M.G.L. c. 148, s. 26G½, is without merit. Although the facility currently provides restaurant service, it also clearly features, on a regular and routine basis, characteristics typical of a bar and/or nightclub. Such activity is legally within the building's allowed use as an A-2 classification and within the scope of its entertainment licensure and therefore, subject to the enhanced sprinkler requirements of M.G.L. c. 148, s. 26G½.

G) Decision and Order

For the foregoing reasons, this Board, by a majority vote **upholds** the Order of the East Brookfield Fire Department, requiring the Appellants to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½. An adequate system shall be installed throughout the establishment in accordance with the following timetable:

Plans for the installation of an adequate sprinkler system shall be submitted to the Head of the Fire Department not later than 90 days from the date of this decision. Installation shall be completed within 1 year of the date of this decision.

H) Vote of the Board

Maurice M. Pilette, Chairman	In Favor
Bart J. Shea, Acting Deputy/Fire Marshal, City of Boston	In Favor
Thomas Coulombe	In Favor
Alexander MacLeod	Opposed
Peter E. Gibbons	In Favor
Aime DeNault	In Favor
George Duhamel	In Favor

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I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,

A handwritten signature in black ink, appearing to read "Maurice Pilette", written over a horizontal line.

Maurice Pilette, P.E., Chairman

Dated: March 12, 2012

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:

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